OSC

ONTARIO SECURITIES COMMISSION

Summary Report for Dealers, Advisers and Investment Fund Managers

Compliance and Registrant Regulation

OSC Staff Notice 33-752

August 10, 2021

Ontario

CONTENTS

Director's message

We are pleased to continue our important outreach through this year's Summary Report for Dealers, Advisers and Investment Fund Managers (**Summary Report**). It provides an overview of our work during the 2020-2021 fiscal year.

What a year it's been! Along with the rest of the financial industry, staff of the Compliance and Registrant Regulation Branch (**CRR**) and from across the Ontario Securities Commission (**OSC**, **Commission**) have been working remotely for more than a year. I am proud of the entire CRR Team for their flexibility and ability to pivot to our new work situation, while continuing to serve our markets.

This year, we completed our compliance, financial disclosure and conduct reviews remotely through a combination of telephone/video conferencing and desk reviews. Mindful of how our processing times impact registered firms and individuals (collectively, **registrants**), we strived to process registration and exemptive relief applications as efficiently as possible. Understandably, there have been some challenges including higher than expected volumes of registration-related submissions and applications, which impacted our ability to meet service standards. As communicated in the **email blast** issued June 29, 2021, we are working to return to our normal processing times as soon as possible. We will keep our registrant community informed of our progress.

Some highlights of 2020-2021 included issuing the 2020 Risk Assessment Questionnaire (**RAQ**) and a COVID-19 Survey. We took steps to make completing the RAQ easier for registrants this year by pre-populating certain information. The responses to our COVID-19 Survey indicated a few issues at the start of the pandemic from market volatility and the industry's transition to a remote work environment, but there were no systemic issues identified.

Our Registrant Outreach program remains a priority for the OSC. We continue to provide tools and programs to help registrants with their compliance obligations. The Registrant Advisory Committee was re-constituted, welcoming some new members for a two-year term. Visit the Registrant Outreach program webpage to access the Topical Guide for Registrants, a listing of Director's decisions or to obtain information about upcoming educational webinars, which are posted in the calendar of events.

With the publication of regulatory notices on March 29, 2021 setting out the requirements for crypto-asset trading platforms to commence registration as either a dealer and/or marketplace, there will be a significant amount of work to bring these firms into the regulatory framework. We are working to implement an efficient process to onboard these firms and will be transparent with them regarding our progress.

Our compliance review activity will prioritize the following this year:

- firms identified as high-risk through the RAQ process
- Client Focused Reforms review, which will commence after key implementation dates of June 30, 2021 and December 31, 2021
- firms offering online advice or online dealer platforms
- "Registration as the First Compliance Review" for crypto-asset trading platforms.

Finally, we have provided our team structure and staff directory again this year. If you have a question, comment, or would like to discuss regulatory matters, please feel free to reach out to us. As always, we look forward to engaging with you.

Debra Foubert
Director, Compliance and
Registrant Regulation

Introduction

Who we are

The CRR Branch of the OSC is responsible for the registration and ongoing regulation of firms and individuals who are in the business of trading in, or advising on, securities or commodity futures and firms that manage investment funds in Ontario. The OSC's mandate is to:

- provide protection to investors from unfair, improper or fraudulent practices,
- foster fair, efficient and competitive capital markets and confidence in capital markets,
- foster capital formation, and
- contribute to the stability of the financial system and the reduction of systemic risk.

CRR's activities are integral to the OSC's vision of being an effective and responsive securities regulator, fostering a culture of integrity and compliance and instilling investor confidence in the capital markets.

The purpose of this report

This Summary Report prepared by staff of the CRR Branch is designed to assist registrants with information on the following:

- **Education and outreach**
  Part 1 of this report provides links and information to the registration and ongoing educational resources and outreach opportunities available to current and prospective registrants.

- **Regulatory oversight activities and guidance**
  Part 2 of this report can be used by registrants as a self-assessment tool to strengthen compliance with Ontario securities law and, as appropriate, to make changes to enhance their systems of compliance, internal controls and supervision.

- **Impact of upcoming initiatives**
  Part 3 of this report provides insights into some of the new and proposed rules and other regulatory initiatives that may impact a registrant's operations.

- **Registrant conduct activities**
  Part 4 of this report is intended to enhance a registrant's understanding of our expectations and our interpretation of regulatory requirements. This section also provides insight into the types of regulatory actions the CRR Branch may take to address non-compliance.

Organizational structure

The following page sets out the organizational structure of the CRR Branch. We encourage registrants to reach out to staff with any inquiries they may have. Contact information for directors, managers and staff within the branch can also be found in the staff directory presented at the end of this report.

DEBRA FOUBERT
DIRECTOR

416-593-8101

FELICIA TEDESCO
DEPUTY DIRECTOR
OPERATIONS

416-593-8273

ELIZABETH TOPP
MANAGER
PORTFOLIO MANAGER TEAM

416-593-2377

VERA NUNES
MANAGER
INVESTMENT FUND MANAGER TEAM

416-593-2311

DENA STAIKOS
MANAGER
DEALER TEAM

416-593-8058

The Operations Unit is comprised of three teams of lawyers and accountants and is responsible for conducting compliance field reviews, reviewing applications for exemptive relief and working on policy initiatives.

The members of this unit also act as subject matter experts in support of registration files.

If you have compliance questions, please contact the managers, based on your registration category, as follows:

- Portfolio Managers
  - Elizabeth
- Investment Fund Managers
  - Vera
- Exempt Market or Scholarship Plan Dealers
  - Dena

ELIZABETH KING
DEPUTY DIRECTOR
REGISTRANT CONDUCT

416-204-8951

MICHAEL DENYSZYN
MANAGER
REGISTRANT CONDUCT

416-595-8775

The Registrant Conduct Team handles files referred from other CRR teams and other OSC branches for matters that require further regulatory action to remediate registrant misconduct or to review higher-risk registration applications.

Registrant misconduct may be addressed by applying terms and conditions to registration, suspension of registration, or being referred to the Enforcement branch.

This team is also responsible for working on policy initiatives.

If you have conduct matter questions, please contact Mike.

JEFF SCANLON
MANAGER
REGISTRATION

416-597-7239

The Registration Team focuses on the initial registration of firms and individuals, subsequent changes to registration, including the surrender of registration, and ongoing maintenance of registration information.

This team is also responsible for processing registration-related applications for exemptive relief and working on registration-related policy initiatives.

If you have registration-related questions, please contact Jeff.

LOUISE BRINKMANN
MANAGER
DATA STRATEGY & RISK

416-596-4263

The Data Strategy & Risk Team is responsible for:

- supporting the branch's data requirements and conducting data analytics
- leading the business planning and financial reporting processes
- performing financial analysis of registrants' interim and annual financial statements and capital calculations
- leading the Capital Markets Participation Fee process and overseeing all fee matters
- working on policy initiatives
- maintaining CRR's risk register and conducting risk analysis
- coordinating all branch reporting.

If you have questions about CRR's data, reporting, fees or risk operations, please contact Louise.

Who this report is relevant to

This Summary Report provides information for registrants that are directly regulated by the OSC. These registrants primarily include investment fund managers (**IFMs**), portfolio managers (**PMs**), exempt market dealers (**EMDs**) and scholarship plan dealers (**SPDs**). At present, registrants overseen by the OSC include:

1,114	68,343
Firms[1]	Individuals

542	312	255	5
IFMs[2]	PMs[3]	EMDs[4]	SPDs[5]

In general, firms must register with the OSC if they conduct any of these activities in Ontario:

- are in the business of trading in, or advising on, securities (this is referred to as the "business trigger" for registration)
- direct the business, operations or affairs of an investment fund
- act as an underwriter
- conduct trading or advising activities involving commodity futures contracts or commodity futures options.

Individuals must register if they trade, advise or underwrite on behalf of a registered dealer or adviser, or act as the Ultimate Designated Person (**UDP**) or Chief Compliance Officer (**CCO**) of a registered firm.

There are seven dealer and adviser categories for firms trading in or advising on securities, or acting as an underwriter, as applicable:

- EMD
- SPD
- restricted dealer
- PM
- restricted portfolio manager
- investment dealer (**ID**), who must be a member of the Investment Industry Regulatory Organization of Canada (**IIROC**)
- mutual fund dealer (**MFD**), who must, except in Quebec, be a member of the Mutual Fund Dealers Association of Canada (**MFDA**).

There are four dealer and adviser categories for firms trading in or advising on commodity futures:

- commodity trading adviser
- commodity trading counsel
- commodity trading manager
- futures commission merchant.

There is a separate category for firms that direct the business, operations, or affairs of investment funds:

- IFM.

---

[1] This number excludes firms registered solely in the category of: MFD, ID, commodity trading adviser, commodity trading counsel, commodity trading manager and futures commission merchant.

[2] This number includes firms registered only as IFMs and IFMs also registered in other registration categories (with the exception of SPD).

[3] This number includes firms registered only as PMs and PMs also registered in other registration categories (with the exception of IFM).

[4] This number includes firms registered only as EMDs and EMDs also registered in other registration categories (with the exception of IFM or PM).

[5] This number includes firms registered only as SPDs and SPDs also registered in other registration categories.

Although firms registered in the category of MFD, ID or futures commission merchant, and their registered individuals, are directly overseen by the self-regulatory organizations (**SROs**) (the MFDA and IIROC), the OSC approves the registration of:

- firms in the category of MFD, ID or futures commission merchant
- individuals sponsored by a MFD.

Applications for firm registration are reviewed by CRR staff, but we remind firms seeking registration in the category of ID, MFD or futures commission merchant to also apply separately for membership with the relevant SRO.

While this report focuses primarily on registered firms and individuals directly overseen by the OSC, firms directly overseen by the SROs are encouraged to review the Summary Report as certain information is applicable to them as well.

Service standards

The CRR Branch is committed to accountability and transparency, and to ensuring services are delivered in the most efficient and effective ways possible. All CRR service standards and timelines are incorporated into the **OSC Service Commitment**. Information about CRR-specific service standards and timelines can also be accessed at:

- **Exemption Application**
- **Registration Materials**
- **Notices of Termination**
- **Compliance Reviews - Registrants**

Part 1 OUTREACH

1.1 Outreach program and resources

Registrant Outreach since inception

69
In-person and webinar seminars held

7,416
Web replays viewed

14,725
Individuals that have attended outreach seminars

>13,700
Topical Guide for Registrants - page views annually

We continue to interact with our stakeholders through our Registrant Outreach program. The objectives of our Registrant Outreach program are to strengthen communication with Ontario registrants that we directly regulate and with other industry participants (such as lawyers and compliance consultants), to promote strong compliance practices and to enhance investor protection.

Interested in attending an upcoming Registrant Outreach seminar?
Click here for our calendar of upcoming events.

Looking for information about regulation matters?
Take a look at our Registrant Outreach program webpage or our Topical Guide for Registrants for help with key compliance issues and policy initiatives.

Want to be informed about newly released guidance?
Register to receive our e-mail alerts here.

Looking for a listing of recent e-mail alerts and links to each?
Refer to the Compliance-related reports, staff notices and email notifications webpage.

Interested in reading previously published Director's decisions?
Refer to the Opportunity to be heard and Director's decisions webpage.

If you have questions related to the Registrant Outreach program or have suggestions for seminar topics, please send an e-mail to RegistrantOutreach@osc.gov.on.ca.

1.2 Registration

Registration Outreach Roadshow

The Registration Team completed another successful Registration Outreach Roadshow (the **Roadshow**) in early 2021. For the first time, we delivered virtual sessions which allowed us to broaden our reach to include both in-province and out-of-province registered firms as well as a group of law firms. This expanded reach allowed CRR staff to continue to build working relationships with the registration teams of the firms that we have the most interaction with, as well as disseminate information via the law firms to smaller registered firms we may not have had the opportunity to visit.

The five registered firms and group of law firms that we met with were positive about the experience and appreciated the opportunity to have informal sessions with us to better understand our expectations, discuss registration best practices, and discuss how to better integrate the registration process with their business needs.

One of the new elements added to the Roadshow this year was a detailed review of the Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* (**Form 33-109F4)**, with a focus on highlighting common deficiencies that slow the review process of otherwise problem-free applications.

We continue to see significant value of these Roadshows and gained useful feedback from our post-meeting survey to the participants, which will be taken into consideration for future Roadshows.

Change of service provider for U.S. background checks

As of May 31, 2021, the OSC has partnered with Mintz Global Screening Inc. (**Mintz**), a provider of background screening products, to provide United States (**U.S.**) background checks for the OSC where an applicant has been resident in the U.S. at any time in the 10 years prior to the date of application.

The OSC has been conducting U.S. background checks on applicable applicants using a different service provider since 2018.

Applicants will receive an e-mail from Mintz within 48 hours of filing their application on the National Registration Database (**NRD**). This e-mail will contain a secure link to an online portal where consent may be provided.

Applicants are not required to consent to a U.S. background check, however, not doing so may impact their ability to become registered in a timely manner, or in some cases, at all.

Voluntary Surrender Process

We expect a registered firm to file an application to surrender its registration (a **voluntary surrender application**) when it ceases (or intends to cease) conducting registerable activities.

When considering a voluntary surrender application, we look for satisfactory evidence that:

- all financial obligations of the registered firm to its clients have been discharged
- all requirements, if any, prescribed by the regulations for the surrender of registration have been fulfilled or the Director is satisfied that they will be fulfilled in an appropriate manner
- the surrender of the registration is not prejudicial to the public interest.

To initiate the voluntary surrender process, registered firms must submit:

- An application letter for the voluntary surrender that includes:
  - a statement that the firm "consents to suspension" of the firm's registration in Ontario
  - the correct registration categories of the firm
  - why the firm has ceased, or plans to cease, registerable activities
  - the date that the firm ceased (or will cease) registerable activities
  - the business activities of the firm in the past (both registerable and non-registerable activities)
  - a description of what happened to the firm's clients (e.g. accounts transferred to another registrant, client assets liquidated and accounts closed, etc.)
  - confirmation whether the firm holds or has ever held client assets
  - if operating an investment fund, whether the investment fund has been liquidated and assets returned to clients or whether management of the fund has been transferred to another registrant
  - the future plans of the firm and its principals (including non-registerable activities).

- An officer's/director's certificate that confirms:
  - when the firm ceased (or intends to cease) registerable activities and in which categories of registration
  - the firm has discharged its financial obligations to its clients, including, if applicable, any investment funds or managed accounts that it formerly managed
  - the firm does not hold client assets
  - there are no existing or potential claims or liabilities against the firm by its clients
  - there are no unresolved complaints against the firm by its clients
  - the firm's financial statements submitted as part of the surrender application present fairly the financial position of the firm in accordance with International Financial Reporting Standards or U.S. GAAP.

There is no prescribed format for the application letter or officer's/director's certificate. However, to assist applicants, CRR staff can provide, upon request, a template form of certificate to be completed by the firm's officer or director.

The application letter must be filed through the **OSC's Electronic Filing Portal** by selecting "Application for voluntary surrender of registration" from the drop-down menu. The officer's/director's certificate should be included as an attachment to the application filed through the portal.

In addition to the information above, as part of the voluntary surrender review process, please note the firm may also be required to provide:

- the most recent audited financial statements, and if the audited financial statements are as at a date prior to the date that the registrant ceased registerable activities, unaudited interim financial information dated after the registrant has ceased registerable activities
- an auditor's comfort letter dated after registerable activities have ceased or, depending on the circumstances, a specified procedures report performed by a licensed public accountant/audit firm, to provide evidence that all financial obligations to clients have been discharged.

Voluntary Surrender Process (cont'd)

All voluntary surrender applications are reviewed individually upon receiving the firm's consent to suspension pending surrender, and the information required in order to accept the firm's voluntary surrender may vary on a case-by-case basis. We will not recommend that the Director approve an application to surrender registration if the information that we require is not provided to us. If the Director does not have sufficient information to accept a firm's surrender of registration, the firm's registration will remain in a suspended state.

Most voluntary surrender applications take at least 60 working days to process from the time that a complete application is provided to staff. Please file your complete application as early as possible to avoid delays.

Registered firms should:

- provide all of the information described above that is required for removing one or more categories of registration and additional information as requested by CRR staff
- ensure that a key principal (either the CCO or UDP) remains with the registrant to complete the voluntary surrender application
- ensure that any outstanding fees owing to the OSC have been paid
- file their complete voluntary surrender application as far in advance as possible and at least 60 working days before the date they would like the surrender to take effect.

Registration of Client Relationship Managers

As discussed in last year's summary report, the Canadian Securities Administrators (**CSA**) has updated its expectations for the assessment of Relevant Investment Management Experience (**RIME**) for advising representatives (**ARs**) wishing to act as client relationship managers (**CRMs**). Experience in selecting individual securities is part of the RIME that is required to become registered as an AR. Associate advising representatives (**AARs**) that act as CRMs typically will not have accumulated sufficient securities-selection RIME to become ARs. However, an AAR or other individual who can demonstrate that they have all of the other proficiencies required for registration as an AR, in addition to significant experience relevant to CRM activity, can be registered as an AR who will specialize in CRM activity (a **CRM AR**).

Firms seeking CRM AR registration on behalf of individual applicants should note the following:

- The individual must satisfy the education requirements of section 3.11 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and demonstrate sufficient CRM-related RIME.
- CRM activities can vary and be quite broad depending on the experience level of the individual. Some basic CRM experience may be sufficient for registration as an AAR. However, if the individual is seeking registration as a CRM AR, the experience must be significant and typically includes:
  - a thorough understanding of the investment decision making strategies and processes of the firm; and/or
  - portfolio security selection strategies of the firm (this would not include any stock picking analysis or recommendation).
- Individuals with only mutual fund sales experience are unlikely to qualify as an AAR (please refer to **CSA Staff Notice 31-332 *Relevant Investment Management Experience for Advising Representatives and Associate Advising Representatives of Portfolio Managers*** for more information), and therefore would not qualify as a CRM AR.
- Individuals with only financial planning experience are unlikely to qualify as an AAR (but will be assessed on a case-by-case basis), and therefore would likely not qualify as a CRM AR.

Registration of Client Relationship Managers (cont'd)

As a reminder:

- Firms seeking CRM AR registration on behalf of individual applicants should include a statement in the "Current Employment" entry for the sponsoring firm, stating "Individual is seeking registration as CRM AR". This will facilitate efficiency in the review of the application.
- Terms and conditions are standardized and will be applied to the registration of CRM ARs to restrict their registerable activities to things that do not involve the selection of securities.
- To ensure that there are no misunderstandings on the part of clients, CRM ARs may not use any title that could imply to a reasonable person that their advising activities are materially the same as those of unrestricted ARs. If a CRM AR's title does not include "client relationship manager", "client relationship manager" must be attached to their title as a description of their function in client communications and marketing materials.

For additional information, please refer to the **Guidance on Client Relationship Management specialists and related FAQ**.

1.3 Registrant Advisory Committee

Established in January 2013, the **Registrant Advisory Committee** (**RAC**) is in its fifth term. It is comprised of nine external members and is chaired by the Director of CRR, Debra Foubert. The RAC meets quarterly, with members serving a minimum two-year term.

The RAC's objectives include:

- advising on issues and challenges faced by registrants in interpreting and complying with Ontario securities law, including matters related to registration and compliance
- providing feedback on the development and implementation of policy and rule-making initiatives that promote investor protection, fair and efficient capital markets, and contribute to the stability of the financial system.

Topics of discussion over the past fiscal year included:

- how the COVID-19 pandemic impacted registrant operations
- the OSC's inclusion and diversity initiative
- the January 2021 final report of the Capital Markets Modernization Taskforce
- compliance initiatives, including the **marketing review** conducted in fiscal year 2020-2021 and the suitability sweep completed in fiscal year 2019-2020
- various discussions on CRR's initiatives related to the **OSC's Regulatory Burden Reduction** initiative
- the **2020 Risk Assessment Questionnaire**.

Part 2

INFORMATION FOR DEALERS, ADVISERS AND INVESTMENT FUND MANAGERS

Overview of Part 2 of the Summary Report

Part 2 of the Summary Report provides an overview of the compliance initiatives, including findings and outcomes from compliance reviews, conducted during the 2020-2021 fiscal year.

Where applicable, best practices, specific legislation and relevant guidance are provided to assist firms in addressing each of the topic areas discussed. For ease of reference, registration categories are listed beside each topic deficiency heading to indicate that the information is relevant to firms registered in those categories.

We encourage registrants to review the information presented in Part 2 of this report as the guidance presented may be helpful to registration categories other than those listed.

2.1 COVID-19 Survey

In July 2020, we issued a survey to gather information from registrants to better understand the initial impacts of the COVID-19 pandemic on registrants' operations. The survey was sent to registrants domiciled in Ontario and covered the six-month period January 1, 2020 to June 30, 2020. We received over 700 survey responses.

We reviewed and analyzed the survey information provided. We contacted individual firms where necessary to further clarify their responses and ask for additional information if a specific compliance issue was identified.

Questions in the survey focused on collecting information on specific data points including:

- assets under management (**AUM**), capital raised, gross revenue and net income/loss
- the number of client complaints
- use of leverage by clients
- amount of subscriptions and redemptions
- amount of illiquid securities held in fund portfolios
- gating/suspension of redemptions.

We also asked registrants if they encountered issues in implementing their business continuity plan or receiving services from their service providers during the first half of 2020. The majority of registrants responded that they did not encounter issues in implementing their business continuity plan or receiving services from their service providers as a result of the COVID-19 pandemic.

Overall, the information gathered from the survey demonstrated that registrants adapted well during this unprecedented period.

a) Remote work and "business location" registration considerations (All)

In light of the COVID-19 pandemic and the increased prevalence of registered individuals working remotely, there have been questions on whether such individuals are required to identify their personal residence as a "business location" in accordance with NI 33-109. We continue to take a flexible and practical approach on this issue considering many firms have established work-from-home (**WFH**) arrangements with their registered individuals.

NI 33-109 defines a "business location" as a location where the firm carries out an activity that requires registration, and includes a residence if regular and ongoing activity that requires registration is carried out from the residence or if records relating to an activity that requires registration are kept at the residence.

In considering whether a personal residence is required to be reported as a "business location" in accordance with NI 33-109, registered firms should consider:

- if there is a regular and ongoing WFH arrangement, and
- if any of the following factors are present:
  - more than one registered individual conducts registerable activities on behalf of the firm at the residence
  - the residence is held out to the public (signage, business cards, etc.) by the individual or firm
  - the individual physically meets with clients at the residence
  - the individual maintains books and records at the residence that are not duplicated at the firm's head office.

Registered firms that allow staff to work remotely must have compliance systems in place, including appropriate policies and procedures related to supervision, that adequately address the WFH arrangements.

b) Business continuity planning (All)

NI 31-103 requires registered firms to establish, maintain and apply policies and procedures that establish a system of controls and supervision to ensure compliance with securities legislation and manage the risks associated with their business in accordance with prudent business practices. Section 11.1 of NI 31-103CP states an effective compliance system includes internal controls designed to manage the risks that affect a registrant's business, including risks that may relate to business interruption.

The operational challenges arising out of the COVID-19 pandemic demonstrated the importance of business continuity plans (**BCPs**). It is important that senior management is involved in the creation and approval of the firm's BCP. Senior management's ongoing communication and participation regarding the firm's BCP will demonstrate a positive and strong tone at the top.

Registered firms should:

- develop procedures to mitigate, respond to, and recover from business interruptions and other types of disturbances that may disrupt the firm's day-to-day operations
- consider how the firm will communicate with clients, key personnel, third-party service providers and regulators in the event of a business interruption
- implement procedures to protect, backup and recover the firm's books and records
- determine and document the firm's alternate/back-up locations in the event of a business interruption
- train the firm's employees on the BCP
- determine and document how often the BCP needs to be updated and tested for effectiveness
- determine and document how the firm will assess the adequacy of the BCPs of outside service providers.

Legislative reference and guidance

- Section 11.1 *Compliance system* of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) and related Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103CP)
- CSA Staff Notice 31-350 *Guidance on Small Firms Compliance and Regulatory Obligations*
- OSC Staff Notice 33-747 *2016 Annual Summary Report for Dealers, Advisers and Investment Fund Managers*, pages 42-43 (OSC Staff Notice 33-747)

2.2 2020 Risk Assessment Questionnaire (All)

In June 2020, we issued the 2020 RAQ to over 1,000 firms that were registered with the OSC in the categories of IFM, PM, restricted portfolio manager, EMD, restricted dealer and SPD.

The RAQ is our primary tool to obtain information about our registrants' business operations, which supports our risk-based approach to select firms for compliance reviews or targeted reviews. The information collected from the 2020 RAQ was analyzed using a risk assessment model. The analysis results in each firm's response being risk-ranked and assigned a risk score.

A firm may be risk-ranked as high based on a variety of factors, including: the broad nature of the firm's business activities, the amount of client AUM, the size of the firm, and the number or type of clients serviced by the firm. Firms that are risk-ranked as high may be selected for a compliance review. In addition, if we conduct a targeted review of a particular topic or issue, we may select firms for this review based on their RAQ responses.

The RAQ is issued on a two-year cycle, and registrants can expect to receive the next version in April 2022. Given the success in pre-populating firm information as part of the 2020 RAQ process, we expect to pre-populate the same information in a firm's 2022 RAQ by carrying forward responses from the firm's 2020 RAQ submission. Pre-populated responses will only be provided to questions where we do not expect the firm's response to change or change materially from their most recent RAQ submission.

2.3 Presence review

In 2020, we conducted reviews of (i) registered firms that had not been included in any recent CRR compliance sweeps, or (ii) firms that were registered and had not been reviewed since their initial compliance review which took place as part of the "Registration as the First Compliance Review" program.[6] This initiative involved reviews of 100 firms across all categories of registration.

The scope of these reviews was primarily determined based on the level of the firm's business activity in Canada.

Sixty-four of the firms reviewed had limited activity in Canada and many were also regulated by foreign regulators. As such, these reviews focused on confirming and updating our understanding of the firm's:

- corporate structure and lines of business
- registerable activities in Ontario, including products and services offered as well as the firm's interaction with its Ontario clients
- marketing activities in Ontario
- compliance function, including the appropriate registration of individuals.

The remaining 36 firms were subject to normal course, on-site compliance reviews (conducted virtually), using a risk-based approach to focus on specific areas of the firm's business activities.

[6] For more information on the "Registration as the First Compliance Review" program, please refer to section 3.1 a) *Pre-registration reviews* of OSC Staff Notice 33-745 *2014 Annual Summary Report for Dealers, Advisers and Investment Fund Managers*.

a) Representatives servicing clients without required registration (PM / EMD)

We continued to see representatives of registered firms conducting registerable activities in Ontario without being registered as either ARs, AARs or dealing representatives.

We found this most frequently in registered firms based outside of Canada. In some cases, the unregistered individuals were responsible for collecting and updating know-your-client (**KYC**) information and discussing investment or account performance with the firm's Ontario clients. In other cases, although the unregistered individuals were not interacting with the firm's Ontario clients, they were, due to other activities they were performing, found to be conducting registerable activity. For example, we found certain firms used computer-based quantitative methods to select securities but did not register the individuals who review or approve system-generated recommendations to buy, sell or hold securities. In our view, these individuals are undertaking registerable advising activity, regardless of whether they interact with the firm's clients.

We recognize that the registration regimes in foreign jurisdictions may differ and do not require that every individual trading in, or advising on, securities on behalf of a firm be registered. However, we remind firms based outside of Canada that individuals trading in, or advising on, securities on behalf of the firm and servicing clients in Ontario must be registered as either an AR, AAR or dealing representative. This includes both individuals who conduct relationship management activities and individuals who select securities for client portfolios.

If we find that a firm is not in compliance with the registration requirements in Ontario, this may raise concerns regarding the adequacy of the firm's compliance system and may reflect poorly on the firm's continued fitness for registration. This may also raise concerns that the firm is not adequately supervising its representatives. Registered firms are responsible for the conduct of individuals acting on behalf of the firm.

PMs and EMDs should:

- take adequate steps to understand and comply with the registration requirements in Ontario by consulting compliance and/or legal advisors before commencing registerable activities in Ontario
- assess whether an individual assigned to service an Ontario client is conducting activity that would require registration in Ontario, and if so, take immediate steps to apply to register the individual in Ontario
- have measures in place to ensure that only registered individuals are performing duties related to the firm's obligations as a registrant
- provide adequate training to employees on the registration requirements in Ontario.

Legislative reference and guidance

- Section 25 *Registration* of the *Securities Act* (Ontario) (**the Act**)
- Section 1.3 *Fundamental concepts* of **NI 31-103CP**
- Section 11.1 *Compliance system* of **NI 31-103** and related **NI 31-103CP**
- **Guidance on Client Relationship Management specialists and related FAQ**
- OSC Staff Notice 33-750 *2019 Annual Summary Report for Dealers, Advisers and Investment Fund Managers*, page 27 (**OSC Staff Notice 33-750**)
- **OSC Staff Notice 33-747**, pages 52-54

b) Policies and procedures not tailored to the firm's operations (IFM / PM / EMD)

While many countries share common regulatory principles, specific securities laws and regulations can differ from one jurisdiction to another. As a result, firms must tailor their policies and procedures to their specific operations and the regulatory requirements in jurisdictions in which the firm is registered.

During our reviews, we noted instances where registrants that operate in multiple countries did not incorporate Ontario-specific requirements into their compliance programs. Specifically:

- Written policies and procedures did not address Ontario regulatory requirements, such as CRM2 guidelines for client account reporting and minimum timelines for retention of books and records.
- The annual compliance report to the Board of Directors (or equivalent) did not address the firm's compliance with Ontario securities regulatory standards or was signed by someone other than the firm's CCO.
- Confidentiality provision language in employment agreements, such as non-disclosure agreements and whistleblower policies, did not permit exceptions for voluntary communication with Ontario regulatory authorities.

Registered firms should:

- address Ontario-specific requirements in their written policies and procedures
- address the firm's compliance with Ontario securities legislation in the annual compliance report to the Board of Directors (or equivalent); this report is the responsibility of the Ontario-registered CCO and cannot be delegated to unregistered individuals
- allow exceptions for voluntary communication with regulatory authorities in Ontario in confidentiality provision language of key employment agreements
- provide training on Ontario regulatory requirements to staff involved in Ontario operations.

Legislative reference and guidance

- Section 11.1 *Compliance system* of NI 31-103 and related NI 31-103CP
- Part 5, *Ultimate Designated Person and Chief Compliance Officer* of NI 31-103 and related NI 31-103CP
- OSC Staff Notice 33-751 *2020 Annual Summary Report for Dealers, Advisers and Investment Fund Managers*, page 28 (OSC Staff Notice 33-751)
- OSC Staff Notice 33-749 *2018 Annual Summary Report for Dealers, Advisers and Investment Fund Managers*, pages 35-36 (OSC Staff Notice 33-749)

2.4 Marketing review

We conducted a desk review of the marketing practices of IFMs, PMs and EMDs (the **marketing review**). Our sample consisted of 45 registrants for which the OSC is the principal regulator (**PR**). We reviewed sample marketing material for each type of marketing practice indicated by registrants in response to the 2020 RAQ.

For the IFM sample, the review of marketing material focused on the IFMs marketing practices related to the firm's corporate brand. In addition, the sample of IFMs was selected based on firms that offered a "responsible investing" product or service, which could include all or a combination of the incorporation of environmental, social or governance (**ESG**) factors, socially responsible investing, or impact investing into their investment products or advisory services. We reviewed the IFMs marketing material and internal policies and procedures related to responsible investing and did not identify any substantive concerns specific to this area of the marketing review.

The purpose of the marketing review was to:

- assess the marketing practices of registrants for compliance with Ontario securities law
- verify the existence of an internal compliance infrastructure to support references to or disclosure about ESG investment factors that IFM registrants are making in their marketing material.

The OSC's marketing review is part of a larger initiative involving other CSA jurisdictions that are also executing a similar marketing review of registrants for which they are the PR. The CSA will consider whether updated industry guidance should be published following the conclusion of all the reviews.

a) Inadequate disclosure when using benchmarks (All)

We continued to note instances of registered firms presenting benchmarks in marketing materials to compare to the performance of their investment strategies, without adequate accompanying disclosure for a client to draw correct conclusions from the comparisons.

Registered firms have an obligation to deal fairly, honestly and in good faith with clients. Any statements made about any matter that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship with the registrant must be true or cannot omit information necessary to prevent the statement from being false or misleading in the circumstances in which it is made.

Registered firms should:

- provide disclosure accompanying the presentation of a benchmark, including:
  - the full name of the benchmark, and information about the relevance and purpose of each benchmark used
  - an explanation of the material differences between the benchmark and the investment strategy
  - the reporting currency and basis of the benchmark (e.g. net or gross-of-fees, total return or price return)
  - the composition of a blended benchmark, including the specific weights that each component within the blended benchmark represents
  - if a benchmark is presented for general information purposes and is not meant to be compared to the firm's specific strategy (e.g. widely known and followed indices), how the benchmark information should be used
  - any other information necessary to make the comparison fair and meaningful.

b) Misleading marketing material (All)

We found several firms that included claims in marketing material that were misleading. A marketing claim is considered misleading if the claim includes statements that are subjective and cannot be substantiated, incorrect or outdated.

Registrants must ensure that all claims included in marketing material can be substantiated, are factually correct and are up to date to ensure that existing and prospective clients are not misled.

Registered firms should:

- maintain adequate support to substantiate any claims made in marketing material
- provide adequate context and references to the information supporting claims, including third party sources, so investors can better assess the merits of the claim
- have an individual independent of the preparer review and approve the marketing material prior to its use
- have oversight over the use of claims in marketing material as part of an adequate compliance system
- have written policies and procedures to address all the above.

Legislative reference and guidance

- Subsection 44(2) *Representation prohibited* of **the Act**
- Subsection 2.1(1) *General duties* of **OSC Rule 31-505** *Conditions Of Registration*
- Section 11.1 *Compliance system* of **NI 31-103** and related **NI 31-103CP**
- CSA Staff Notice 31-325 *Marketing Practices of Portfolio Managers* (**CSA Staff Notice 31-325**), page 5-6
- Section 3.3(a) of **OSC Staff Notice 33-747**, page 56
- Section 2.2(a) of **OSC Staff Notice 33-748** *Annual Summary Report for Dealers, Advisers and Investment Fund Managers*, page 23

c) Prohibited representations (All)

We identified instances where firms made prohibited representations in their marketing material that:

- implied the OSC had passed upon the financial standing, fitness or conduct of the firm
- resulted in the registration of the firm being improperly marketed
- suggested the firm or an individual employed by the firm is holding out as being registered through the use of misleading titles.

i) OSC has passed upon the financial standing, fitness or conduct of the firm

We found statements in marketing material that could cause investors to believe that the OSC has passed upon the financial standing, fitness or conduct of the firm. For example, the marketing material included statements that the:

- firm worked with the OSC to develop its platform
- OSC oversees the activities of the firm
- firm is governed by the OSC
- firm is subject to regular OSC audits
- firm remains in good standing with the OSC.

These statements are misleading and inappropriate because they imply that the OSC is involved in the firm's operations or may exaggerate the frequency of OSC compliance reviews conducted on the firm. Registered firms are responsible for their compliance with Ontario securities law and OSC oversight does not in any way lessen the firm's responsibility for compliance.

ii) Improper marketing of registration

Some firms improperly represented their registration with the OSC by omitting or inaccurately marketing:

- their category of registration
- the CSA jurisdiction(s) in which the firm is registered.

It is important that a firm clearly states its category of registration, and the jurisdiction(s) where it is registered when marketing its registration as this information informs investors of registerable services the firm is authorized to provide.

iii) Holding out and misleading use of titles

We observed that some firms and their employees made inappropriate use of titles. For example:

- websites and social media accounts included posts that stated or implied that unregistered individuals were registered to advise or trade in securities
- employment titles of unregistered individuals implied that they were registered
- employment titles used by registered individuals did not accurately reflect the nature of their duties or their category of registration.

Firms and individuals should not use titles or make statements that imply they are registered when they are not. Employment titles should accurately reflect the nature of the employee's duties and registration to avoid misleading investors.

c) Prohibited representations (cont'd)

Registered firms should:

- not make written or verbal representations that the OSC has in any way passed on the firm's financial standing, fitness, or conduct
- when representing the firm's registration category in marketing material, state the category of registration and the jurisdiction(s) that it is registered in
- not permit the use of titles which suggest that individuals are permitted to perform activities they are not registered to perform
- ensure that employees use titles that accurately reflect the nature of their duties and registration
- establish clear policies and procedures for all of the above.

Legislative reference and guidance

- Subsection 44(1) *Representation of registration* of **the Act**
- Subsection 44(2) *Representation prohibited* of **the Act**
- Subsection 46 *Prohibited representation re Commission approval* of **the Act**
- Section 11.1 *Compliance system* of **NI 31-103** and related **NI 31-103CP**
- **CSA Staff Notice 31-325**, page 5-6

2.5 Outside business activities (All)

In 2019, we conducted focused compliance reviews of seven firms across various dealer and adviser registration categories to assess their supervision of their representatives' outside business activities (**OBAs**). This included their supervision of any restricted client terms and conditions (**RCTCs**) due to an OBA that creates a position of influence over a potential client (such as a representative that is also a religious leader being restricted from trading or advising in securities with a member of their church). These reviews also helped to inform proposed amendments to NI 33-109 and NI 31-103 on the regulation of OBAs that were published in February 2021 as part of the OSC's Regulatory Burden Reduction initiative. For more information, please refer to section 3.1 of the Summary Report.

The firms we reviewed had over 21,000 representatives with over 30,000 OBAs. The majority of the OBAs were for providing financial services such as banking, insurance, or financial planning outside of the representatives' sponsoring firms. There were also a significant number of OBAs that were employment or business activities in non-financial services such as restaurants, retail stores or investment properties. There were also a large number of volunteer and community activities, for example with charitable and not-for-profit organizations.

OBAs are a regulatory concern for a number of reasons, including when the OBA:

- creates a material conflict of interest for the representative that must be addressed in the best interest of the client
- places the representative in a position of influence over clients, especially vulnerable clients
- creates the risk for client confusion
- limits the ability of the representative to properly service clients.

As such, firms must supervise their representatives' OBAs as part of their compliance system and respond to material conflicts of interest which include OBAs. Firms are also required to report their representatives' OBAs on each individual's registration application, and report changes to OBAs on the NRD within ten days.

We did not find significant deficiencies in the reviewed firms' OBA supervision and we found no evidence of non-compliance with any RCTCs. Overall, we found that the reviewed firms had effective supervision of their representatives' OBAs, including:

- written policies and procedures on OBAs
- maintaining records of all representatives' OBAs and any RCTCs
- training for representatives on OBAs
- taking appropriate supervisory actions, such as warning letters, when they identified non-compliance with their OBA policies, such as no or late reporting of an OBA.

Outside business activities (cont'd)

In addition, the reviewed firms used other effective practices to supervise OBAs, which included:

- using standard forms and/or questionnaires to collect and assess their representatives' OBAs
- having an intake method for representatives to disclose their OBAs to the firm
- providing guidelines that describe what an OBA is and the types of OBAs that are restricted or prohibited by securities laws or by the registered firm
- having active involvement of the appropriate staff of the registered firm in the oversight of OBAs
- performing internet searches or branch reviews to identify non-disclosed OBAs
- having their representatives provide annual certifications for attesting compliance with policies relating to OBAs
- providing monthly or quarterly reminders to their representatives to report changes to their OBAs
- disclosing OBAs to clients using a standard form that is tailored for each OBA
- obtaining acknowledgement from clients of their representative's OBAs
- for representatives with an RCTC, obtaining written confirmation from their clients that they do not have a relationship with the representative in their position of influence.

Legislative reference and guidance

- Section 13.4 *Identifying and responding to conflicts of interest* of **NI 31-103** and related **NI 31-103CP**
- Section 11.1 *Compliance system* of **NI 31-103** and related **NI 31-103CP**
- Section 4.1 *Notice of Change to an Individual's Information* of National Instrument 33-109 *Registration Information* (**NI 33-109)**
- Item 10 and Schedule G of Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* (**Form 33-109F4**)

2.6 Complaint handling processes (PM / EMD / SPD)

In 2020, staff from the CRR Branch and the SROs jointly conducted a review of a sample of registered firms' websites to assess whether their complaint escalation processes and timelines for accessing the services of the Ombudsman for Banking Services and Investments (**OBSI**) were presented on their websites in a manner consistent with NI 31-103 and applicable SRO rules. Staff focused primarily on firms that have an internal ombudsperson.

During the review, staff identified a number of issues, including a failure to clearly set out a client's right to immediately access OBSI if they are not satisfied with the firm's response. In some cases, clients were instead directed to the firm's internal ombudsperson. Staff found this practice to be problematic as it may mislead clients to believe that they are required to contact an internal ombudsperson first before escalating their complaints to OBSI, or that the internal ombudsperson is an alternative to OBSI. As well, we observed that the availability of OBSI services was not given at least equal prominence as the information about the firm's internal ombudsperson, which could significantly affect a client's ability to access OBSI services in a timely manner.

Following the review, staff of the OSC and SROs issued a joint letter to the firms and requested that they revise their websites and applicable documents (e.g. brochure, relationship disclosure document, account agreement) to comply with securities laws.

We remind firms that both the UDP and CCO have responsibility for establishing an effective compliance system, which includes maintaining a complaint handling process that is consistent with the firm's obligations to deal fairly, honestly and in good faith with their clients.

We received responses from the firms that appropriate action will be or had already been taken to address the issues, including establishing a timeline for revising websites and reprinting applicable documents. We will continue to monitor firms' complaint handling practices as part of our compliance reviews to verify that the complaint handling and escalation processes are presented in a manner that are clear, fair and not misleading to clients.

Complaint handling processes (cont'd)

Registered firms should:

- document all complaints in a complaint log
- send an initial response to the complainant within five business days of receipt of a complaint
- provide a substantive response to complaints indicating the firm's decision on the complaint within 90 days of receiving a complaint
- have management (such as the UDP or CCO) review the complaint log periodically to identify patterns or areas where improvements could be made to strengthen the firm's procedures and controls
- provide information to clients about the availability of a dispute resolution service provider at three points in time (i.e. at account opening, at the time of the complaint and at the time of the decision)
- in addition to the above items, if using an internal ombudsperson, disclose all of the following:
    - the internal ombudsperson is employed by the firm or is an affiliate of the firm and, unlike OBSI, is not an independent dispute resolution service
    - the client may submit a complaint to OBSI without going to the internal ombudsperson if the firm has not provided the client with a written notice of its decision within 90 days of the client's complaint submission
    - if a client is not satisfied with the firm's decision, the client may immediately submit a complaint to OBSI without going to the internal ombudsperson and that the client has 180 days after receipt of the firm's decision to submit their complaint to OBSI
    - the services of OBSI are free
    - the use of the firm's internal ombudsperson process is voluntary, specifying the estimated length of time the internal process is expected to take, based on historical data
    - the statutory limitation periods continue to pass while an internal ombudsperson reviews a complaint, which may impact a client's ability to commence a civil action.

Legislative reference and guidance

- Section 11.1 *Compliance system* of NI 31-103 and related NI 31-103CP
- Sections 13.15 *Handling complaints* and 13.16 *Dispute resolution service* of NI 31-103 and related NI 31-103CP
- Joint CSA Staff Notice 31-351, IIROC Notice 17-0229, MFDA Bulletin #0736-M *Complying with requirements regarding the Ombudsman for Banking Services and Investments*
- CSA Staff Notice 31-338 *Guidance on Dispute Resolution Services – Client Disclosure for Registered Dealers and Advisers that are not Members of a Self-Regulatory Organization*

2.7 Net Asset Value adjustments (IFM)

Section 12.14 of NI 31-103 requires an IFM to deliver no later than the 90th day after the end of its financial year and no later than the 30th day after the end of its first, second and third interim period, a completed Form 31-103F4 *Net Asset Value Adjustments* (**Form 31-103F4**), if any net asset value (**NAV**) adjustment has been made in respect of an investment fund managed by the IFM during the financial year, including any interim period. A NAV adjustment is necessary when there has been a material error and the NAV per unit does not accurately reflect the actual NAV per unit at the time of computation.

IFMs are expected to have policies that clearly define what constitutes a material error that requires adjustment.

Staff reviewed 85 Form 31-104F4s received between April 1, 2020 and January 31, 2021, submitted by 35 IFMs relating to NAV adjustments impacting 145 investment funds. The most common causes of NAV adjustments were:

- errors made by third-party fund administrators, including pricing errors and incorrect income/expense accruals
- control failures within the firm, including incorrectly setting up securities on the firm's systems, trading errors, and using stale pricing files
- inadequate communication between PMs and fund administrators especially in the case of trades in derivatives
- mispricing of illiquid or hard-to-value securities
- incorrect recording of corporate actions
- incorrect accounting between different classes and series of units within an investment fund especially when the classes of the funds were in different currencies.

Staff followed up with the IFM regarding the Form 31-103F4 in instances where:

- the reason for the NAV adjustment was unclear
- the error persisted for an extended period
- it was unclear if the unitholders and investment fund were compensated as a result of the NAV adjustment and, if so, by how much
- the error was not detected by the IFM but by a third-party
- no changes were made to the system of controls of the IFM or the third-party administrator after the error was corrected.

While most of the errors were identified by the IFM, there were instances where the error was identified by sub-advisers, auditors, or third-party fund administrators. Staff's review found that most of the errors were identified and rectified in a timely manner, however, we continued to note instances where inadequate controls resulted in the error remaining undetected for an extended period of time (e.g. greater than one month).

Net Asset Value adjustments (cont'd)

IFMs should:

- maintain and apply written policies and procedures to ensure that the fund's investments are properly valued and that the NAV is accurately calculated
- adequately oversee a service provider's procedures for calculating NAV
- maintain and apply written policies and procedures to identify and correct any NAV calculation errors, including policies and procedures that:
  - establish a reasonable materiality threshold for NAV adjustments
  - set out how NAV calculation errors will be rectified
  - identify how the fund and its unitholders will be made whole (as appropriate) if the NAV has been materially overstated or understated
- adjust the fund's NAV (including retroactive adjustments) and compensate the fund and its unitholders as appropriate when there is a NAV adjustment
- re-assess the control failure that resulted in the incorrect NAV and enhance controls where necessary
- submit Form 31-103F4 within the required time frame to the principal regulator if there has been a NAV adjustment.

Legislative reference and guidance

- Section 12.14 *Delivering financial information - investment fund manager* of NI 31-103 and related NI 31-103CP
- Part 11, *Division 1 - Compliance* of NI 31-103 and related NI 31-103CP
- OSC Staff Notice 33-751, pages 29-30
- OSC Staff Notice 33-742 *2013 Annual Summary Report for Dealers, Advisers and Investment Fund Managers*, pages 58-61
- Registrant Outreach seminar (June 2017) - *Effective Oversight of Service Providers and Modernization of Investment Fund Product Regulation - Alternative Funds*

2.8 Registration & Commission filings

a) When wholesaling securities is considered registerable activity (All)

The term “wholesaling” in the securities context has no formal definition; however, we understand the term to generally mean the act of soliciting registrants on behalf of one or more issuers in order to have the issuer’s securities offered by the registrant to the registrant’s clients or prospective clients. Since the registrant’s clients become the end-purchasers of the issuer’s securities, we would consider wholesaling to be an act or conduct in furtherance of that trade. In staff’s view, wholesaling is therefore captured by clause (e) of the definition of “trade” under subsection 1(1) of the Act and, if done with regularity and for a business purpose, may require registration.

Section 8.5 of NI 31-103 provides an exemption from registration where the trade is made through a registered dealer. This exemption is not available where a person or company conducts trading activities for which they are not registered or exempt from registration and then directs the execution of that trade through a registered dealer. Such trading activities could involve directly contacting persons in the local jurisdiction to solicit their purchase of securities or marketing the securities in the local jurisdiction.

This exemption is only available where the wholesalers deal exclusively with registered dealers and neither contact nor solicit end-purchasers. The concept of solicitation is broadly defined under securities law and can include acts such as creating or adapting communications about the issuer’s securities for registered representatives to use in client discussions or posting these materials on a public website available to end-purchasers (including the registered dealer’s website).

Furthermore, in accordance with the general condition set out in section 8.0.1 of NI 31-103, the use of section 8.5 of NI 31-103 is not available to a person or company if the person or company is registered in the local jurisdiction and if their category of registration permits the person or company to act as a dealer or trade in a security for which the exemption is provided.

Firms not registered as dealer may rely on the exemption in section 8.5 when wholesaling, provided the trade is made exclusively through a registered dealer and there is no intervening trading activity by that person for which that person is not appropriately registered or otherwise exempt from the dealer registration requirement and there is no contact with the end-purchaser. For example, an IFM that is not registered as a dealer may promote the fund to registered dealers, provided they do not solicit or communicate with the end-purchaser.

a) When wholesaling securities is considered registerable activity (cont'd)

Market participants who wholesale should:

- not communicate with end-purchasers when relying on section 8.5 of NI 31-103, including through written communications and marketing and registered firms should have procedures to prevent their employees from doing so
- seek registration as a dealer if they are not able to rely on section 8.5 of NI 31-103
- have procedures to prevent their registered individuals from engaging in wholesaling outside of the registered firm.

Legislative reference and guidance

- Subsection 1(1) of **the Act** (definition of "trade")
- Section 8.0.1 *General condition to dealer registration requirement exemptions* of **NI 31-103**
- Section 8.5 *Trades through or to a registered dealer* of **NI 31-103**

b) Ownership changes (All)

i) Missed section 11.9/11.10 notices and missed filings of Form 33-109F5

We continued to see firms not filing the notice of proposed ownership changes in, or asset acquisitions of, registered firms required under sections 11.9 or 11.10 of NI 31-103. Specifically, during our compliance reviews we noted a number of deficiencies as a result of:

- registered firms or registered individuals (e.g. UDP, CCO, AR or dealing representative of the firm) acquiring 10% or more of the securities of another registered firm, or their sponsoring firm, without first providing the regulator with the required notice
- registrants acquiring all or a substantial part of the assets of another registered firm without first providing the regulator with the required notice
- registered firms not providing the regulator with the required notice as soon as the registered firm knew, or had reason to believe, that 10% or more of its voting securities were going to be acquired.

In staff's view, a "substantial part of the assets" of a registered firm includes the acquisition (whether structured as a "purchase" for compensation or not) of:

- another registered firm's book of business
- a business line or division of another registered firm
- investment fund management contracts of another registered firm that is an IFM.

Where we identify missed notices for completed transactions, we require the registered firm to file the notice materials for review and pay the applicable filing fees. We may also charge late fees for the late section 11.9 notices as well as applicable late fees for each related securities regulatory filing that is also filed late. Failure to provide notice of ownership changes or asset acquisitions may also result in the issuance of a warning letter or further regulatory action.

Registered firms may want to consider using the new template, recently developed as part of the OSC's commitment to reduce regulatory burden, to prepare these notices. For more information, please refer to **section 3.1** of the Summary Report.

b) Ownership changes (cont'd)

We also noted instances where, in addition to the registered firm missing the notice under sections 11.9 or 11.10 of NI 31-103, the firm did not make the required filings under NI 33-109, in particular the filing of Form 33-109F5 to reflect the change in share ownership or the acquisition of its assets.

ii) Changes to Item 3.12 of Form 33-109F6 and Item 17 of Form 33-109F4

Currently, a registered firm has 30 days to file any changes to information previously reported in Part 3 of Form 33-109F6, which includes Item 3.12 *Ownership chart*. A registered individual or permitted individual must also update information previously provided under Item 17 *Ownership of Securities and Derivatives Firms* of Form 33-109F4 within 10 days of such change.

In some cases, a change in ownership will require a filing for both the firm and individual if the change in ownership requires a registered individual or permitted individual to disclose their ownership interest in a registered firm. Often a filing will be made under Item 3.12 for the firm but not under Item 17 for the sponsored or permitted individual.

Registrants should put in place a procedure to review whether a filing is required under Item 17 of Form 33-109F4 for any applicable individuals when making an update under Item 3.12 of Form 33-109F6 and make the required filings within the prescribed time.

Registered firms should:

- understand when the submission of a section 11.9 or 11.10 notice is required
- provide sufficient information in the notice including all relevant facts regarding the acquisition to enable the regulator to determine if the acquisition is:
  - likely to give rise to a conflict of interest
  - likely to hinder the registered firm in complying with securities legislation
  - inconsistent with an adequate level of investor protection
  - otherwise prejudicial to the public interest
- ensure that all changes to Form 33-109F6, resulting from ownership changes, are filed by submitting a completed Form 33-109F5 within the time frames set out in Part 3 of NI 33-109
- have policies and procedures in place to determine whether a filing is required under Item 17 of Form 33-109F4 for any applicable individuals when making an update under Item 3.12 of Form 33-109F6
- have policies and procedures in place to ensure that required filings are made within the deadlines established under securities laws so as to minimize late filings.

Legislative reference and guidance

- Section 11.9 *Registrant acquiring a registered firm's securities or assets* of NI 31-103 and related NI 31-103CP
- Section 11.10 *Registered firm whose securities are acquired* of NI 31-103 and related NI 31-103CP
- Appendix D of OSC Rule 13-502 *Fees*
- Sections 3.1 *Notice of Change to a Firm's Information* and 4.1 *Notice of Change to an Individual's Information* of NI 33-109
- Item 17 *Ownership of Securities and Derivatives Firms* of Form 33-109F4
- Form 33-109F5 *Change of Registration Information* (Form 33-109F5)
- Item 3.12 *Ownership chart* of Form 33-109F6 *Firm Registration*

c) Incomplete Form 33-109F5 submissions (All)

i) Blacklines required for changes to Form 33-109F6 filed via Form 33-109F5

A Form 33-109F5 filing to update information about a registered firm previously filed using Form 33-109F6 requires registered firms to provide a blackline of the amended section of the Form 33-109F6. Not providing this blackline causes delays in processing the submission and may require follow-up with the firm.

Registrants need to provide blacklines showing the amended sections of the form when making an update to information previously provided under Form 33-109F6.

ii) Title of authorized signing officer or partner required in Form 33-109F5

An update to information about a registered firm previously filed using Form 33-109F6 requires that the title of an authorized signing officer or partner be specified in the certification section in Form 33-109F5. Not providing the title when making an update may lead to follow-up questions from staff and delays in processing the submission.

Registered firms should:

- provide a blackline of the amended sections when making an update to information previously provided under Form 33-109F6
- confirm that the authorized signing officer or partner's title is provided when using Form 33-109F5 to update any changes to Form 33-109F6.

Legislative reference and guidance

- Section 3.1 *Notice of Change to a Firm's Information* of NI 33-109
- Item 1 *Type of Form* and Item 5 *Certification* of Form 33-109F5

d) Exemptive relief applications

i) At-will financing/equity lines

Staff of the Corporate Finance Branch have recently reviewed a number of filings by reporting issuers that indicate that the issuers have entered into an "at-will financing facility" or similar type of financing arrangement with an institutional investor. In working with the Corporate Finance Branch on these reviews, CRR staff noted that certain of these financing arrangements appeared to represent an "equity line financing arrangement" or "equity draw down facility" (collectively, an **equity line**).

Under an equity line, an issuer typically enters into an agreement with an institutional investor (the **purchaser**) which provides that the issuer may from time to time require the purchaser to purchase a specified number of securities of the issuer, usually at a discount to the then market price. From the perspective of the issuer, an equity line may secure access to a readily available source of funds at a time or times of the issuer's choosing and may serve a similar function to a line of credit from a conventional lender. From the perspective of the purchaser, an equity line provides the purchaser with an opportunity to purchase securities of the issuer at a discount to the market price. The purchaser may seek to offset these purchases through resales of securities or short sales of identical borrowed securities into the secondary market in order to monetize the spread between the discounted purchase price and the market price.

We remind market participants that, to operate an equity line in Canada, both the issuer and the purchaser generally require registration relief. This is because, in an equity line:

- a distribution of securities to the purchaser may represent an indirect distribution of securities by the issuer to the public (i.e., investors in the secondary market) through the purchaser, acting as an intermediary
- the purchaser may be purchasing securities "with a view to distribution" (i.e., the resale of such securities and/or of identical borrowed securities) and may therefore be considered an "underwriter"[7] as defined in subsection 1(1) of the Act.

The nature of the exemptive relief required to operate an equity line is described in the decision *Re The Roseworth Group Ltd. and Cell-Loc Inc.* dated April 26, 2002 and subsequent decisions that have followed that decision. For an example, see **Re Natcore Technology Inc. and Dutchess Opportunity Fund II, LP.** dated September 30, 2016.

In view of the fact that an equity line purchaser may be considered to be acting as an underwriter in an indirect distribution of securities to the public, and consistent with the guidance in section 1.7 of NI 45-106CP, staff take the view that the distributions of securities to the purchaser should be made in reliance on the prospectus exemption in section 2.33 of NI 45-106, with the result that the resale of these securities will be a distribution.

If a purchaser is acting as an underwriter in an indirect distribution of securities to the public, staff take the view that the issuer would not be able to distribute freely trading securities to the purchaser under other prospectus exemptions, including the prospectus exemptions in Part 2 of OSC Rule 72-503. As explained under "Statement of Principle" in OSC Rule 72-503CP, issuers, registrants and other market participants seeking to distribute freely trading securities to purchasers outside of Canada should take reasonable steps to demonstrate that the purchasers are purchasing the securities with investment intent and not "with a view to distribution" and that they have taken sufficient measures in the circumstances of the distribution to make it reasonable to conclude that the offered securities come to rest outside Canada.

[7] The U.S. Securities and Exchange Commission (the **SEC**) similarly takes the view that an equity line financing is an indirect primary offering and an equity line purchaser is an underwriter. See the **SEC Compliance and Disclosure Interpretations (C&Ds) in response to Question 139.12 and 139.13**.

d) Exemptive relief applications (cont'd)

We also remind market participants that other requirements of Ontario securities law, including early warning and insider reporting requirements, the prohibition on trading in securities of a reporting issuer while in possession of material undisclosed information and the prohibition on market manipulation, may also apply to market participants involved in equity line arrangements.[8]

Market participants should:

- consider whether a proposed financing could be considered an equity line arrangement and, if so, consider whether the issuer and purchaser require exemptive relief
- take sufficient steps to make it reasonable to conclude that the offered securities come to rest outside Canada if seeking to distribute freely trading securities to purchasers outside of Canada, either under a prospectus or a prospectus exemption.

Legislative reference and guidance

- Subsection 1(1) of **the Act** (definitions of "dealer", "distribution" and "underwriter")
- Paragraphs 25(1)(a) and 25(2)(a) of **the Act**
- Section 1.3 *Fundamental concepts* of **NI 31-103CP**
- Section 3.8 *Review time frames for "equity line" short form prospectuses* of the **Companion Policy to National Instrument 44-101** *Short Form Prospectus Distributions*
- Section 2.33 *Acting as an underwriter* of **National Instrument 45-106** *Prospectus Exemptions*
- Section 1.7 *Underwriters* of Companion Policy **45-106CP** *Prospectus Exemptions*
- Part 2 *Exemptions from the prospectus requirement* of **OSC Rule 72-503** *Distributions Outside Canada*
- Part 1 *Statement of Principle* of **Companion Policy to OSC Rule 72-503CP** *Distributions Outside Canada*

[8] See also the commentary in Recommendation No. 26 [*Prohibit short selling in connection with prospectus offerings and private placements*] in the **Final Report of the Capital Markets Modernization Taskforce** released on January 22, 2021.

d) Exemptive relief applications (cont'd)

ii) Foreign exchange payment services/money-services businesses

In November 2020, CRR staff, in consultation with staff from the Corporate Finance Branch and Derivatives Branch, finalized a novel application for relief by a firm (the **Filer**) that had recently acquired the foreign exchange (**FX**) risk management and payment services business of EncoreFX, a former money-services business (**MSB**) that had filed for bankruptcy in March 2020. The Filer was granted time-limited relief from the dealer registration and prospectus requirements of the Act to operate the former MSB business of EncoreFX in Ontario on terms and conditions that are based on the proposed regulatory framework for derivatives firms set out in the CSA derivatives business conduct and registration rules (Proposed NI 93-101 and NI 93-102).

The relief was novel in that this was the first time in recent years that the Commission granted relief to allow a filer to trade over-the-counter (**OTC**) derivatives with "non-individual commercial hedgers" who are not otherwise permitted clients. The Commission has previously granted this type of relief on a number of occasions to entities that trade OTC derivatives only with permitted clients.

We anticipate that this relief may be considered a precedent for other FX payment services/MSB firms in Ontario. Accordingly, since the publication of this decision, OSC staff have engaged in outreach sessions with a number of other FX payment services and MSB firms that are active in Ontario with a view to determining whether they may need and wish to apply for similar relief, pending completion of the proposed derivatives business conduct and registration rules.

For more information, see **Re Global Reach Financial Solutions Inc.** dated November 16, 2020.

Legislative reference and guidance

- **National Policy 11-203** *Process for Exemptive Relief Applications in Multiple Jurisdictions*
- Section 1.1 *Definitions of terms used throughout this Instrument* of **NI 31-103**
- **Proposed National Instrument 93-101 *Derivatives: Business Conduct***
- **Proposed National Instrument 93-102 *Derivatives: Registration***

Part 3 INITIATIVES IMPACTING REGISTRANTS

3.1 Burden reduction

The Burden Reduction Task Force, as announced in **OSC Staff Notice 11-784 *Burden Reduction***, was established to identify ways to enhance competitiveness and save time and money for registrants and other market participants, while protecting investors. The OSC, including the CRR Branch, is taking action to address the concerns identified through the consultation process by committing to the initiatives outlined in the report on **Reducing Regulatory Burden in Ontario's Capital Markets** published on November 19, 2019 (the **Regulatory Burden Report**).

As highlighted in section 6.4 *Concerns, Decisions and Recommendations Affecting Registrants,* of the Regulatory Burden Report, CRR staff specifically identified 44 suggestions through the consultations to change requirements and processes, reflecting nine underlying concerns involving our registrants.

To address the nine concerns, CRR staff has committed to completing 30 initiatives (identified as **R-1** to **R-30** in the Regulatory Burden Report). CRR staff continues to make significant progress towards completion of all initiatives. In addition to the status update provided in last year's summary report, the following discussions highlight initiatives for which significant progress or completion was achieved during the 2020-2021 fiscal year.

NI 33-109 Modernization Project

On February 4, 2021, the CSA announced targeted changes to provide registered firms and individuals with greater clarity on what information is required as part of the registration process, while also improving the quality of information received by regulators. These changes are expected to result in a more efficient registration and oversight process.

The CSA is proposing changes to how registrants report, and firms manage, outside activities, including establishing a framework that outlines categories of outside activities that registrants need to report to the regulators. The changes also codify existing requirements regarding the oversight of outside activities that are positions of influence.

The proposed changes also include amending the way certain required information can be disclosed to regulators to minimize duplicate filings. Other amendments are also expected to reduce the number of common errors seen on forms by providing clear requirements on what information must be disclosed.

Changes to reporting deadlines are also being considered, including extending the timeframe in which registrants are required to provide updates to certain registration information.

This project actions two decisions and recommendations set out in the Regulatory Burden Report, namely, to reassess OBA conflicts of interest and reporting obligations (**R-2**) and to modernize the registration information required by NI 33-109 and associated forms (**R-3**).

The proposed amendments are not intended to change the nature of the registration process, the requirement to register, or the assessment of suitability for registration.

For further information, please refer to the **notice**.

Proposed OSC Rule 32-506 (Under the Commodity Futures Act) Exemptions for International Dealers, Advisers and Sub-Advisers

On December 1, 2020, the OSC published for comment **Proposed OSC Rule 32-506 (*Under the Commodity Futures Act) Exemptions for International Dealers, Advisers and Sub-Advisers* and related Proposed Amendment to OSC Rule 91-502 *Trades in Recognized Options (Under the Securities Act)*** (collectively, the **Proposal**).

The Proposal is a regulatory burden reduction initiative led by CRR staff in consultation with staff from the Derivatives Branch and is intended to codify relief that is routinely granted by the OSC under both the Commodity Futures Act (the **CFA**) and OSC Rule 91-502 *Trades in Recognized Options*, to international dealers, international advisers and international sub-advisers (collectively, **international firms**) in order to:

- enhance institutional investor access to international options and futures markets and thereby reduce regulatory costs for such investors
- reduce regulatory burden by eliminating the need for international firms to file applications for exemptive relief.

The Proposal actions a decision and recommendation set out in the Regulatory Burden Report, namely, to develop a rule that exempts international dealers, advisers and sub-advisers from registration under the CFA (**R-27**).

The comment period on the Proposal expired on March 1, 2021. We received two comment letters, both of which were supportive of the Proposal. Accordingly, staff are considering the comments received with a view to finalizing the Proposal in late 2021 or early 2022.

The commenters asked that the OSC issue an interim order to codify the relief until such time as the Proposals come into force. On April 6, 2021, the OSC granted **Ontario Instrument 32-507 *(Commodity Futures Act) Exemptions for International Dealers, Advisers and Sub-Advisers (Interim Class Order)*** and **Ontario Instrument 91-505 *Exemptions from the Options Proficiency Requirement for International Dealers, Advisers and Sub-Advisers (Interim Class Order)*** in response to this request. These interim class orders came into force on April 15, 2021.

Template form for notices under section 11.9 or 11.10 of NI 31-103

CSA staff annually receive several notifications of acquisitions involving registered firms, as required by section 11.9 or section 11.10 of NI 31-103. CSA staff developed a standard template of a 11.9 and 11.10 notice that filers may use to prepare these notices. In February 2021, this template form was posted to the websites of various CSA members and made available for use. Use of this template to prepare notice filings is voluntary.

The purpose of the template is to assist filers in providing the type of information that staff typically request when reviewing a notice. The template may also make it easier for firms to prepare and submit the notice, and reduce the follow-up required with filers through comment letters seeking additional information. Filers can use the fillable PDF document made available on CSA member's websites or use the template as a guide when creating a separate document. If working with the fillable PDF, filers can attach documents to the PDF if more space is needed to answer a question or additional information needs to be provided.

Template form for notices under section 11.9 or 11.10 of NI 31-103 (cont'd)

Though the information covered in the template includes the type of information that is typically evaluated in the context of these acquisition transactions, it is still possible that staff reviewing the notice may need to contact the filer to seek additional or clarifying information. Over time, the template notice may be updated to improve its usefulness.

In Ontario, this template notice actions the decision and recommendation set out in the Regulatory Burden Report, namely, to improve processing of 11.9 and 11.10 notices under NI 31-103 (**R-29**).

The template form can be accessed from the **Registration forms and documents** webpage (refer to "Exemptions and applications for exemptive relief") on the OSC's website.

3.2 Crypto-asset trading platforms

On March 29, 2021, the CSA and IIROC issued Joint CSA/IIROC Staff Notice 21-329 *Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements* (**CSA/IIROC SN 21-329**) which sets out how securities legislation applies to crypto-asset trading platforms (**CTPs**) that facilitate the trading of:

- crypto assets that are securities (**Security Tokens**), or
- instruments or contracts involving crypto assets (**Crypto Contracts**), as described in **CSA Staff Notice 21-327 *Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets***.

Also on March 29, 2021, the Commission issued a **press release** notifying CTPs that currently offer trading in derivatives or securities to persons or companies located in Ontario, that they must bring their operations into compliance with Ontario securities law or face potential regulatory action.

CSA/IIROC SN 21-329 does not introduce new rules specifically applicable to CTPs, as CTPs were already subject to existing requirements under securities legislation in Canada. Rather, where appropriate, it provides guidance on how the existing requirements of securities legislation may be tailored through terms and conditions on the registration or recognition of CTPs and through discretionary exemptive relief with appropriate conditions.

CSA/IIROC SN 21-329 was a follow-up to the Joint CSA/IIROC Consultation Paper 21-402 *Proposed Framework for Crypto-Asset Trading Platforms* (**CSA/IIROC CP 21-402**) that was published on March 14, 2019. CSA/IIROC CP 21-402 sought feedback on a proposed regulatory framework for CTPs, with a focus on marketplace CTPs, and solicited comments to understand the industry, its risks and how regulatory requirements may be tailored for CTPs.

Crypto-asset trading platforms (cont'd)

CTPs that facilitate trading in Security Tokens or Crypto Contracts are expected to be registered in an appropriate dealer category, and where they trade or solicit trades in Crypto Contracts for retail investors, they will generally be required to register as an investment dealer and become a member of IIROC. An interim registration approach may be available, as described in CSA/IIROC SN 21-329. For CTP operators that have determined that their business is subject to securities legislation, CSA/IIROC SN 21-329 is a roadmap for compliance and provides:

- a discussion of how existing regulatory requirements could apply to CTPs that:
  - may be operating similar to a marketplace (**Marketplace Platform**)
  - are in the business of trading Security Tokens and/or Crypto Contracts (**Dealer Platform**)
  - in some situations may be carrying out activities that have elements of both a Marketplace Platform and a Dealer Platform.
- an overview of the key risks related to CTPs and areas where requirements may be tailored provided that the risks are addressed and investor protection is not compromised
- guidance on the process to be followed to submit an application to the relevant CSA jurisdictions and IIROC.

In addition, CSA/IIROC SN 21-329 provides clarity regarding the steps that a CTP needs to take to comply with securities legislation.

As the technology and operational models of CTPs continue to evolve, we welcome continued dialogue with CTPs and stakeholders on developing issues and possible ways of complying with requirements, and additional areas where flexibility may be appropriate.

3.3 Client Focused Reforms

The CSA published the Client Focused Reforms (**CFRs**) on October 3, 2019, making significant amendments to the registrant conduct obligations under NI 31-103. The CFRs are relevant to all dealers and advisers, with some application to IFMs.

The CFRs demonstrate a shared commitment by the CSA as well as the SROs, to changes that will require registrants to promote the best interests of clients and put clients' interests first. The CFRs are based on the fundamental concept that, in the relationship between registrants and their clients, the clients' interests must come first.

There are two fundamental changes:

- material conflicts of interest, including those resulting from compensation arrangements and incentive practices, will have to be addressed in the best interest of the client
- when making investment suitability determinations, registrants will have to put the client's interest first.

The rest of the CFRs support and build on that core.

Firms must review their policies, procedures and controls and implement any changes necessary to reflect the requirements in the CFRs. This will also require firms to change and update training programs for their staff.

As of June 30, 2021, registrants are required to have implemented the CFRs relating to conflicts of interest, and must have a process in place for identifying material conflicts of interest that arise at both firm and individual registrant levels and ensuring that those material conflicts of interest are addressed in the best interests of their clients.

As of December 31, 2021, registrants are required to have implemented the KYC, know your product (**KYP**), suitability and relationship disclosure information reforms. Among other things, this includes establishing a framework to ensure that clients' interests are put first when making suitability determinations. Firms will also have to make operational changes in the areas of KYC and KYP to support the enhanced suitability determination requirements, to ensure that sufficient information is collected about a client, and that products and services made available to clients are assessed, approved and monitored for significant changes.

We encourage registrants to continue to plan and effectively execute their transition to the new requirements so that they will be in compliance with the CFRs.

The CFRs Implementation Committee and your questions

Staff from the CSA, along with the SROs, have established the CFRs Implementation Committee to consider and provide guidance on operational issues and questions shared by industry stakeholders relating to the implementation of the CFRs. Responses to questions received by the CFRs Implementation Committee from industry stakeholders have been published on the CFRs FAQ webpage to assist registrants as they prepare for the new requirements. We will periodically publish responses to additional questions considered by the CFRs Implementation Committee as we develop additional guidance.

Stakeholders are invited to provide the CFRs Implementation Committee with their feedback and questions regarding operational challenges they are facing implementing the CFRs. To provide their questions, stakeholders including law firms, consultants and others that provide services to industry, are encouraged to complete the form on the CFRs website, found here.

Client Focused Reforms (cont'd)

Next steps

The CSA is committed to ensuring these reforms are effective. Compliance review programs and processes in the CSA jurisdictions will reflect the new requirements for registrants as soon as the CFRs come into effect.

Staff will test for compliance with these new requirements and identify where processes need improvement. CRR staff recognize that the CFRs require firms to make significant changes in their operations. Registrants are required to comply with the CFR requirements after the end of the transition periods, however we recognize that some implementation issues may take longer to resolve and will look at the demonstrated good faith efforts registrants make to comply with these new requirements. As with all registrant conduct requirements, the compliance review process will be supported by the appropriate regulatory actions along the compliance-enforcement continuum.

The CSA is working closely with the SROs to ensure that the CFRs are incorporated into SRO member rules and guidance as well as into SRO compliance review programs and processes. The SROs will harmonize their implementation timelines with the timeline adopted by the CSA.

3.4 Exemption from Underwriting Conflicts Disclosure Requirements

On February 18, 2021, the Commission issued a class order entitled **Ontario Instrument 33-507 *Exemption from Underwriting Conflicts Disclosure Requirements*** (the **Class Order**).

The Class Order was issued in response to concerns raised by a number of institutional investors that the underwriting conflicts disclosure requirements in **National Instrument 33-105 *Underwriting Conflicts*** (**NI 33-105**) may create barriers that prevent institutional investors in Ontario from participating in global offerings on a timely basis. These institutional investors also expressed similar concerns to the Capital Markets Modernization Taskforce (the **Taskforce**) established by the Government of Ontario. On January 22, 2021, the Taskforce published its final report (the **Taskforce Final Report**). The Taskforce Final Report included a recommendation that the Commission provide an exemption from the disclosure of conflicts of interest in connection with private placements to institutional investors.

The Class Order provides that a person or company is exempt from the underwriting conflicts of interest disclosure requirements in NI 33-105 if:

- the distribution of securities is made under an exemption from the prospectus requirement
- the distribution is of a security that is an "eligible foreign security" as defined in NI 33-105
- each purchaser in Ontario that purchases a security through such person or company is a "permitted client" as defined in NI 31-103.

The Class Order is effective for a period of no longer than 18 months unless extended pursuant to paragraph 143.11(3)(b) of the Act. Accordingly, staff are presently considering an amendment to NI 33-105 to deal with this issue on a permanent basis.

Part 4

ACTING ON REGISTRANT MISCONDUCT

4.1 Annual highlights and trends

The Registrant Conduct Team is responsible for investigating conduct issues involving individual and firm registrants, recommending regulatory action where appropriate, and conducting Opportunity to be Heard (**OTBH**) proceedings before the Director.

Before a Director of the OSC imposes terms and conditions on registration, refuses an application for registration, or suspends a registration, an applicant or registrant has the right under section 31 of the Act to request an **OTBH** before the Director. A registrant or applicant may also request a hearing and review by the Commission of a Director's decision under section 8 of the Act.

Identifying and acting on registrant misconduct

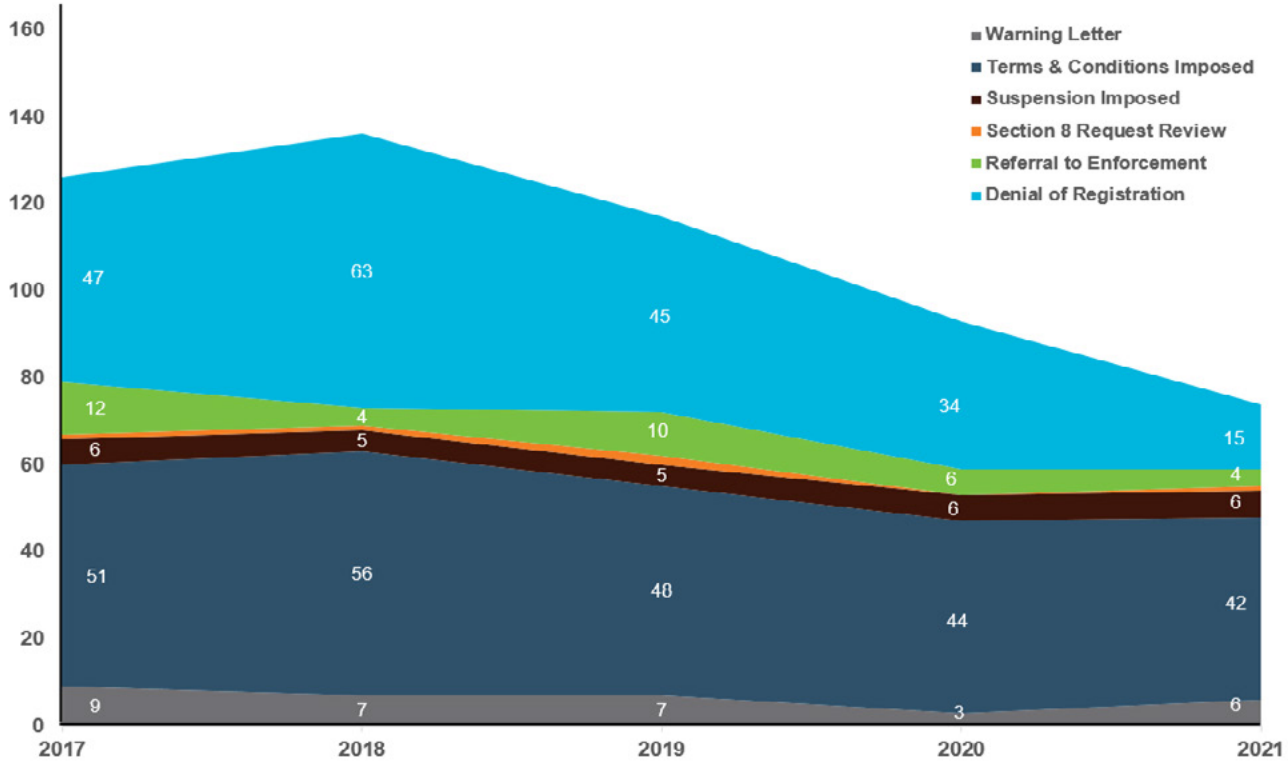
Potential registrant misconduct is identified through compliance reviews, applications for registration, disclosures on NRD, and by other means such as complaints, inquiries or tips. CRR staff also identifies registrant misconduct through background and solvency checks on individual registrants or individual applicants, responses to the RAQ, and referrals from SROs and other organizations.

Acting on registrant misconduct matters is central to effective compliance oversight. It also promotes confidence in Ontario's capital markets, both among the investing public and among the registrants who make best efforts to comply with Ontario securities law. Registrants must remain alert and monitor for potential misconduct by enacting and implementing appropriate policies and procedures, and ensuring that controls are in place to detect and address instances of misconduct.

The Registrant Conduct Team is also responsible for overseeing terms and conditions on registered firms and individuals as a result of a regulatory decision, including a Director's decision or a Commission Order. For example, a registered firm may have terms and conditions requiring it to engage an independent compliance consultant to assist the firm in remediating its compliance deficiencies identified from a compliance review. In this case, we oversee the consultant's work to assess if the identified deficiencies have been adequately addressed by the firm. For more information, see **CSA Staff Notice 31-356 *Guidance on Compliance Consultants Engaged by Firms Following a Regulatory Decision***.

The following chart summarizes the regulatory actions taken by CRR staff against firms or individuals engaged in registrant misconduct or serious non-compliance with Ontario securities law.

CRR Regulatory Actions FYE 2017 - 2021



The chart illustrates that CRR makes use of regulatory actions along the compliance-enforcement continuum, the action being commensurate with the magnitude of misconduct or non-compliance in a given situation. Terms and conditions, denials of registration and suspensions of registration are all tools available to CRR staff to address serious non-compliance.

As the chart demonstrates, while some categories of CRR regulatory actions have remained relatively constant, denials of registration have declined in the three most recent fiscal years. However, this does not reflect any reduced vigilance in CRR's exercise of its gatekeeper responsibilities when reviewing registration applications.

We believe that the July 2017 publication of **CSA Staff Notice 33-320 *The Requirement for True and Complete Applications for Registration*** continues to provide valuable guidance to registered firms performing due diligence on their individual applicants, and has been effective in deterring some non-disclosure by applicants for registration.

In addition, staff continues to conduct early-stage conference calls with firms' CCOs (or their delegates) where material non-disclosure or other concerns have been identified, which has led to firms reviewing and, in 14 cases this year, withdrawing a number of applications that might otherwise have resulted in denial of registration.

Notwithstanding the success of these measures, CRR continues to identify material non-disclosure of regulatory, criminal and/or financial information in registration applications, and this concern still comprises a substantial number of the cases reviewed by CRR where registration is ultimately denied.

In cases where there appear to be issues with an application that could bear on the applicant's suitability for registration, such as past misconduct or untrue or misleading information given in the application itself, the file may be referred by the Registration Team to the Registrant Conduct Team for further investigation, requiring a longer review time. Each phase in the registration process when applications transition from the Registration Team to the Registrant Conduct Team are illustrated in this **process chart**.

Referrals are made to the Enforcement Branch in cases where the appropriate tool is a power that can only be exercised by the Commission. In fiscal 2020-2021, there were four referrals to the Enforcement Branch.

One example of a previous referral made by CRR that was recently concluded was in the matter of **Issam El-Bouji, Global RESP Corporation and Global Growth Assets Inc.** (**Bouji, Global RESP, and GGAI**) in which the Commission issued an order on March 10, 2020 approving a joint settlement agreement for continued non-compliance with Ontario securities law.

As part of the settlement, Bouji was permanently banned from acting as a registrant and an officer and director of any registrant or reporting issuer in Ontario, and Global RESP surrendered its scholarship plan dealer registration.

Significant terms and conditions were placed on GGAI's IFM registration to remedy past violations, compensate plan beneficiaries, and ensure GGAI's independence from the Bouji family. GGAI was permanently banned from acting as an IFM for any funds other than the funds it currently manages, which includes the scholarship plans (the **Global scholarship plans**). It is also not permitted to enrol any new subscribers in the plans.

This settlement agreement followed numerous compliance reviews where CRR staff uncovered significant deficiencies including conflicts of interest failures, not reimbursing sales charges as required by an earlier order of the Commission, and failing to meet its KYC and suitability obligations. Global RESP, GGAI and Bouji demonstrated continued non-compliance with Ontario securities law, and had already been subject to a variety of past regulatory actions.

Subscribers who received a commitment to have their enrolment fees reimbursed in prospectuses dated 2002-2004 will be reimbursed by Global RESP and GGAI. Over $900,000 was set aside for this purpose.

GGAI's continued registration as an IFM preserves the assets contained in the Global scholarship plans with the least amount of disruption to subscribers and beneficiaries of the plans.

4.2 Prompt and effective regulatory action

The Registrant Conduct Team may pursue immediate regulatory action against a registrant while an investigation into their conduct continues. These interim measures are taken, in appropriate circumstances, to reduce or stop harm to investors, and may include terms and conditions to limit the registrant's ability to trade, advise or make investor transactions for investment funds it manages, or place other financial restrictions on their operations.

As an example, in November 2019, CRR's Director imposed terms and conditions on the registration of Stableview Asset Management Inc. (**Stableview**), an IFM, PM and EMD. These had the effect of prohibiting the firm from opening any new client accounts, accepting additional assets from existing clients, and distributing or redeeming units of its three investment funds. It also restricted the firm's ability to pay management fees to its UDP, reduce its capital, or charge new legal fees to its funds.

Subsequently, in June 2020, on application by Enforcement staff, the **Court approved the appointment of a receiver for Stableview**.

4.3 Director's decisions and settlements

Director's decisions on OTBH proceedings are published in the OSC Bulletin and on the OSC website at **Opportunity to be heard and Director's decisions**, where they are presented by topic and by year. Director's decisions can be used as an important resource for registrants, as they highlight matters of concern to the OSC, as well as the regulatory action that may be taken as a result of misconduct and non-compliance. The publication of Director's decisions also ensures that CRR's response to serious misconduct is visible to market participants and investors.

Eight Director's decisions were published in the fiscal year 2020-2021 on registrant conduct issues. Three decisions followed contested OTBHs, two decisions were issued in cases where the registrant did not request an OTBH, and three decisions approved settlement agreements between staff and the registrant. A settlement agreement typically contains an agreed statement of facts and a joint recommendation to the Director. Proceeding by way of a settlement agreement with staff allows the registrant to participate in setting out the factual narrative that becomes the basis for the Director's decision.

A summary of all Director's decisions and settlements by topic for fiscal 2020-2021 follows.

Becksley Capital Inc. and Fabrizio Lucchese (November 20, 2020)

Topics: Financial condition (including requirement to report capital deficiencies); Appointment of UDP or CCO

Becksley Capital Inc. (**Becksley**) was an EMD, and Fabrizio Lucchese (**Lucchese**) was its UDP. Staff recommended to the Director that Becksley's registration be suspended because it failed to meet the minimum working capital requirement imposed by Ontario securities law, and because the firm did not have a CCO. Staff also based its recommendation on Becksley's history of non-compliance with Ontario securities law, which included selling securities where no prospectus exemption applied to the transaction, or where the investment was unsuitable for the investor. Staff also recommended that Lucchese's individual registration be suspended.

Neither Becksley nor Lucchese requested an OTBH, and the Director suspended both.

Becksley and Lucchese have applied for a hearing and review of the Director's decision, and as of the date of this writing that application is pending before the Commission.

Kyle Krajewski (September 23, 2020)

Topics: Misleading staff or sponsor firm; Non-securities related conduct

Kyle Krajewski (**Krajewski**) was terminated for cause from his position as a registered mutual fund dealing representative after he inappropriately accessed customer accounts for no valid business purpose. When he applied for registration with a new firm, staff took the position that Krajewski had not been truthful with an internal investigator at his prior firm when the investigator met with Krajewski to interview him about the conduct at issue. Staff recommended to the Director that Krajewski's application for re-registration with the new firm be refused, but following an OTBH the Director determined that Krajewski had been truthful with the internal investigator. The Director granted the application, but imposed a term and condition on Krajewski's registration requiring him to successfully complete an ethics course because he inappropriately accessed customer accounts.

W.A. Robinson Asset Management Ltd. (August 7, 2020)

Topics: KYC, KYP and suitability

The firm is a registered PM, IFM and EMD. Following a compliance review, staff identified that the firm did not have an adequate suitability process and had overly concentrated the majority of its managed account clients in one product, the Frontenac Mortgage Investment Corporation (**FMIC**), which is managed by the firm. Staff recommended interim terms and conditions to proactively address these deficiencies and the firm requested an OTBH. While the firm did not agree with staff's findings as set out in the compliance review, the firm entered into a joint recommendation with staff and agreed to having interim terms and conditions imposed on its registration which was accepted by the Director.

The interim terms and conditions require the firm to retain an independent consultant to prepare a report that outlines a reasonable, appropriate, and empirically supported methodology (including specific criteria) for determining the appropriate level of investment concentration in FMIC for the firm's managed account clients. Following the acceptance of the report by the OSC Manager, the firm shall perform a new suitability assessment for each managed account client holding shares in FMIC, and until the new suitability assessment for a client has been completed, the firm will not accept any further investment in FMIC shares for the client.

John Doe (July 20, 2020)

Topic: Misleading staff or sponsor firm

John Doe (**Doe**) applied for registration as a mutual fund dealing representative. In 2015, the applicant was sentenced to four months in prison after pleading guilty to one count of possessing child pornography. Staff took the position that Doe had not been truthful about the circumstances surrounding his offence during an interview regarding his application, and consequently recommended to the Director that the application be refused. Following an OTBH, the Director concluded that Doe had in fact been truthful during his interview and granted the application.

Ramzee Tams (June 29, 2020)

Topic: Misleading staff or sponsor firm

Ramzee Tams (**Tams**) was a registered mutual fund dealing representative at a time when he was charged with impaired driving. Tams did not disclose this charge to the OSC as required by Ontario securities law. Tams subsequently left his sponsor firm, and then applied for registration with a new firm. At the time of his application, his criminal charge was still outstanding, but Tams did not disclose the existence of that charge on his registration application, as he was required to by Ontario securities law. Staff recommended to the Director that Tams' application be refused on the basis that he lacked the requisite integrity for registration in light of his failure to disclose his criminal charge. Following an OTBH, the Director agreed with Staff's recommendation and refused the application.

PACE Securities Corp. (June 5, 2020)

Topic: Other order made against registrant

The firm was an investment dealer and IFM. On May 14, 2020 the Ontario Superior Court of Justice granted an order authorizing the windup of the firm and appointing Ernst and Young Inc. to oversee the firm's liquidation. The Firm's membership with IIROC was suspended effective May 21, 2020. As a result of subsection 29(1)(2) of the Act, the firm's registration as an investment dealer was automatically suspended but not its registration as an IFM. Therefore, staff subsequently recommended to the Director that the firm's registration as an IFM also be suspended. Neither the firm nor anyone acting on its behalf opposed staff's recommendation and the Director suspended the firm's registration as an IFM stating that it would be inconsistent with the OSC's mandate, and objectionable, to permit the firm to continue to be registered as an IFM when its registration as an investment dealer had been suspended and in light of the court-ordered windup of the firm.

Michael Forsey (April 22, 2020) and Trevor Rosborough (May 4, 2020)

Topics: Trading or advising without appropriate registration; Misleading investors or the public

These were two related files. Michael Forsey (**Forsey**) and Trevor Rosborough (**Rosborough**) were registered as mutual fund dealing representatives with the same firm, and separately sold mutual fund securities through a financial services company owned by Rosborough. In October 2017, both individuals were terminated by their sponsor firm. In April 2018, Forsey was registered with a new firm, and in July 2018, Rosborough reactivated his registration with that same firm. In the intervening periods when Rosborough and Forsey were not registered, they engaged in a "stealth advising" scheme with registered individuals. In this scheme, Rosborough and Forsey advised clients about mutual fund transactions and provided them with all of the necessary paperwork to effect those transactions. This paperwork was later signed by registered individuals who otherwise had no involvement in the transaction.

Staff recommended to the Director that the registration of both individuals be suspended, and each entered into separate settlement agreements with Staff that were approved by the Director. Forsey agreed to have his registration revoked, and Rosborough agreed to a five-year suspension of his registration.

STAFF DIRECTORY

Director's Office

Debra Foubert, Director	416-593-8101	dfoubert@osc.gov.on.ca
Elizabeth King, Deputy Director, Registrant Conduct	416-204-8951	eking@osc.gov.on.ca
Felicia Tedesco, Deputy Director, Operations	416-593-8273	ftedesco@osc.gov.on.ca
Ranjini Srikantan, Branch Administrator	416-593-2320	rsrikantan@osc.gov.on.ca

Team 1 - Portfolio Manager

Elizabeth Topp, Manager	416-593-2377	etopp@osc.gov.on.ca
Sabrina Philips, Administrative Assistant	416-593-2302	sphilips@osc.gov.on.ca
Andrea Maggisano, Senior Legal Counsel	416-204-8988	amaggisano@osc.gov.on.ca
Chris Jepson, Senior Legal Counsel	416-593-2379	cjepson@osc.gov.on.ca
Kat Szybiak, Senior Legal Counsel	416-593-3686	kszybiak@osc.gov.on.ca
Rachel Keane, Legal Counsel	416-263-7681	rkeane@osc.gov.on.ca
Ilona Larionova, Legal Counsel	416-593-8171	ilarionova@osc.gov.on.ca
Carlin Fung, Senior Accountant	416-593-8226	cfung@osc.gov.on.ca
Daniel Panici, Senior Accountant	416-593-8113	dpanici@osc.gov.on.ca
Scott Laskey, Senior Accountant	416-263-3790	slaskey@osc.gov.on.ca
Eugenie Chung, Accountant	416-597-7223	echung@osc.gov.on.ca
Gemma Coppins, Accountant	416-597-7226	gcoppins@osc.gov.on.ca
Mark Delloro, Accountant	416-597-7225	mdelloro@osc.gov.on.ca
Tai Mu Xiong, Accountant	416-263-3797	txiong@osc.gov.on.ca
Vanesa Pavlovski, Accountant	416-597-7207	vpavlovski@osc.gov.on.ca

Team 2 - Investment Fund Manager

Vera Nunes, Manager	416-593-2311	vnunes@osc.gov.on.ca
Margot Sobers, Administrative Assistant	416-593-8229	msobers@osc.gov.on.ca
Erin Seed, Senior Legal Counsel	416-596-4264	eseed@osc.gov.on.ca

Maye Mouftah, Senior Legal Counsel	416-593-2358	mmouftah@osc.gov.on.ca
Robert Kohl, Senior Legal Counsel	416-593-8233	rkohl@osc.gov.on.ca
Faustina Otchere, Legal Counsel	416-596-4255	fotchere@osc.gov.on.ca
Luis Chacin, Legal Counsel	416-593-8220	lchacin@osc.gov.on.ca
Alizeh Khorasanee, Senior Accountant	416-593-8129	akhorasanee@osc.gov.on.ca
Estella Tong, Senior Accountant	416-593-8219	etong@osc.gov.on.ca
Merzana Martinakis, Senior Accountant	416-593-2398	mmartinakis@osc.gov.on.ca
Saleha Haji, Senior Accountant	416-593-2397	shaji@osc.gov.on.ca
Teresa D'Amata, Senior Accountant	416-595-8925	tdamata@osc.gov.on.ca
Awais Ullah, Accountant	416-263-7715	aullah@osc.gov.on.ca
Catherine Muhindi, Accountant	416-597-7808	cmuhindi@osc.gov.on.ca
Daniel Brown, Accountant	416-593-2353	dbrown@osc.gov.on.ca
Daniela Schipani, Accountant	416-263-7671	dschipani@osc.gov.on.ca
Lisa Piebalgs, Accountant	416-593-8147	lpiebalgs@osc.gov.on.ca
Paul Bertucci, Accountant	416-593-8159	pbertucci@osc.gov.on.ca
Kelsie Bishop, Accounting Analyst	416-204-8958	kbishop@osc.gov.on.ca

Team 3 - Dealer

Dena Staikos, Manager	416-593-8058	dstaikos@osc.gov.on.ca
Gloria Tsang, Senior Legal Counsel	416-593-8263	gtsang@osc.gov.on.ca
Paul Hayward, Senior Legal Counsel	416-593-8288	phayward@osc.gov.on.ca
Brendan Smith, Legal Counsel	416-263-7746	bsmith@osc.gov.on.ca
Elaine Wong, Legal Counsel	416-263-7685	ewong@osc.gov.on.ca
Jeff Sockett, Senior Accountant	416-593-8162	jsockett@osc.gov.on.ca
Stratis Kourous, Senior Accountant	416-593-2340	skourous@osc.gov.on.ca
Susan Pawelek, Senior Accountant	416-593-3680	spawelek@osc.gov.on.ca
Andre Colangelo, Accountant	416-593-8104	acolangelo@osc.gov.on.ca
George Rodin, Accountant	416-263-3798	grodin@osc.gov.on.ca

Jason Brito, Accountant	416-263-7716	jbrito@osc.gov.on.ca
Kevieon Barker, Accountant	416-593-8311	kbarker@osc.gov.on.ca
Michael Man, Accountant	416-593-8145	mman@osc.gov.on.ca
Vincent Chow, Accountant	416-593-8127	vchow@osc.gov.on.ca

Team 4 - Registrant Conduct

Michael Denyszyn, Manager	416-595-8775	mdenyszyn@osc.gov.on.ca
Judy Ross, Administrative Assistant	416-593-8284	jross@osc.gov.on.ca
Joyce Taylor, Senior Legal Counsel	416-596-4273	jtaylor@osc.gov.on.ca
Mark Skuce, Senior Legal Counsel	416-593-3734	mskuce@osc.gov.on.ca
Anastasija Sumakova, Legal Counsel	416-593-8152	asumakova@osc.gov.on.ca
Marlene Costa, Legal Counsel	416-593-2192	mcosta@osc.gov.on.ca
Moira Hare, Legal Counsel	416-593-8306	mhare@osc.gov.on.ca
Trevor Walz, Senior Accountant	416-593-3670	twalz@osc.gov.on.ca
Allison McBain, Compliance Examiner	416-593-8164	amcbain@osc.gov.on.ca
Rita Lo, Registration Research Officer	416-593-2366	rlo@osc.gov.on.ca

Team 5 - Data Strategy and Risk

Louise Brinkmann, Manager	416-596-4263	lbrinkmann@osc.gov.on.ca
Kian Sleggs, Senior Business Analyst	416-593-8142	ksleggs@osc.gov.on.ca
Tanvir Taher, Senior Business Analyst	416-263-7692	ttaher@osc.gov.on.ca
Anita Chung, Registration Accountant	416-593-8131	achung@osc.gov.on.ca
Isabelita Chichioco, Financial Analyst	416-593-8105	ichichioco@osc.gov.on.ca
Lucy Gutierrez, Registration Officer	416-593-8277	lgutierrez@osc.gov.on.ca
Andrea Gochuico, Participation Fees Revenue Clerk	416-593-2386	agochuico@osc.gov.on.ca

Team 6 - Registration

Jeff Scanlon, Manager	416-597-7239	jscanlon@osc.gov.on.ca
Anuja Sothirajah, Administrative Assistant	416-263-7708	asothirajah@osc.gov.on.ca
Feryal Khorasanee, Registration Supervisor	416-595-8781	fkhorasanee@osc.gov.on.ca
Jenny Tse Lin Tsang, Registration Supervisor	416-593-8224	jtselintsang@osc.gov.on.ca
Kamaria Hoo, Registration Supervisor	416-593-8214	khoo@osc.gov.on.ca
Colin Yao, Legal Counsel	416-593-8059	cyao@osc.gov.on.ca
Adrienne Chao, Corporate Registration Officer	416-597-7201	achao@osc.gov.on.ca
Amy Fraser, Corporate Registration Officer	416-593-3674	afraser@osc.gov.on.ca
Anne Leung, Corporate Registration Officer	416-593-8235	anneleung@osc.gov.on.ca
Anthony Ng, Corporate Registration Officer	416-263-7655	ang@osc.gov.on.ca
Edgar Serrano, Corporate Registration Officer	416-593-8331	eserrano@osc.gov.on.ca
Jane Chieu, Corporate Registration Officer	416-593-3671	jchieu@osc.gov.on.ca
Leszek Jurczak, Corporate Registration Officer	416-263-7672	ljurczak@osc.gov.on.ca
Pamela Woodall, Corporate Registration Officer	416-593-8225	pwoodall@osc.gov.on.ca
Robert Adah, Corporate Registration Officer	416-597-7814	radah@osc.gov.on.ca
Zeeshan Mukaddam, Corporate Registration Officer	416-263-7689	zmukaddam@osc.gov.on.ca
Cheryl Pereira, Individual Registration Officer	416-593-8149	cpereira@osc.gov.on.ca
Dianna Cober, Individual Registration Officer	416-593-8107	dcober@osc.gov.on.ca
Linda Tam, Individual Registration Officer	416-204-8957	ltam@osc.gov.on.ca
Michael John Egerdie, Individual Registration Officer	416-597-7806	megerdie@osc.gov.on.ca
Nasir Abdulkareem, Individual Registration Officer	416-597-7232	nabdulkareem@osc.gov.on.ca
Yemisi Ashaolu, Individual Registration Officer	416-597-7250	yashaolu@osc.gov.on.ca

OSC ONTARIO SECURITIES COMMISSION

CONTACT US

Ontario Securities Commission
Inquiries and Contact Centre
8:30 a.m. to 5:00 p.m. Eastern Time - Monday to Friday
1-877-785-1555 (Toll-free)
416-593-8314 (Local)
inquiries@osc.gov.on.ca
www.osc.gov.on.ca/en/contactus_index.htm

www.osc.gov.on.ca

If you have questions or comments about this report, please contact:

Daniel Panici
Senior Accountant
Compliance and Registrant Regulation
dpanici@osc.gov.on.ca
416-593-8113

Kevieon Barker
Accountant
Compliance and Registrant Regulation
kbarker@osc.gov.on.ca
416-593-8311